IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2181 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SATWARA NATHA KHIMA & 1 - Appellant(s)
Versus
JIKAR MAMAD & 1 - Defendant(s)

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Appearance :
MR BD KARIA for Appellant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 1,
MS ROOPAL R PATEL for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and award of the Motor Accident Claims Tribunal, Jamnagar passed in M.A.C.P. No.78 of 1983 dated 8th September, 1983 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 05.02.1983, when the deceased-Kanji Natha was

standing on Dhingeshwar road, he was dashed by a bus driven by present opponent No.1 and owned by present opponent No.2. On account of the said accident, the deceased received serious bodily injuries and expired. Therefore, the present appellants being heirs and legal representatives of the deceased filed a petition claiming an amount of Rs.25,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the appellants before the Tribunal that on the day of incident when their deceased son was standing on the Dhingeshwar road, he was dashed by a bus driven in rash and negligent manner by opponent No.1. The story put forward by the appellants is supported by affidavit of one-eye-witness- Savji Ramji(Exh.23), 'Panchnama' of the scene of offence(Exh.19) and F.I.R. of the

incident(Exh.18). However, opponent No.1 in his affidavit(Exh.24) before the Tribunal, has stated that he was not driving the bus in rash and negligent manner at the relevant time, on the contrary as soon as he learnt about the accident he applied the brakes and stopped the bus. However, the 'Panchnama' does not disclose any brake marks at the place of incident. On the contrary, from the documents produced on record it clearly transpires that at the time of accident, the road was clear and the vehicle in question was passing through a residential area, and hence, if the opponent No.1 had taken enough care the accident in question could have been avoided. Hence, the tribunal is justified in holding that since the deceased lost his life on account of the sole negligence on the part of the opponent No.1, the appellants are entitled for compensation.

3.1 While considering the aspect of compensation, the Tribunal has taken into

consideration the medical and other evidence available on record. Looking to the age of the deceased, the nature of injuries sustained by him and considering the fact that he was coming from a 'mason' family , the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellants for enhancement of the amount of compensation. I am, therefore, in complete agreement with the reasonings given and the findings arrived at by the Tribunal and, hence, do not find any reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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